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IN THE

Supreme Court Of The United States

October Term, 1984

MAGNOLIA BROKERAGE COMPANY, JERROLD DEAN THORNTON, LIGON SPECIALIZED HAULERS, INC., MAGNOLIA FREIGHT AGENCY, INC.,

Petitioners,

v.

ANTHONY L. JACKSON, OLLIE JACKSON,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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STATUTORY PROVISIONS INVOLVED

1. *Alabama Rules of Appellate Procedure:* Rule 38.

Rule 38. Damages for frivolous appeal.

In civil cases, if the appellate court shall determine on motion or ex mero motu that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

2. *Mississippi Code Annotated* §11-3-23 (Supp. 1984):

§11-3-23. Judgment for damages against appellant on affirmance of judgment or on failure to prosecute appeal — computation.

In case the judgment or decree of the court below be affirmed, or the appellant fails to prosecute his appeal to

effect, the supreme court shall render judgment against the appellant for damages, at the rate of fifteen percent (15%), as follows: If the judgment or decree affirmed be for a sum of money, the damages shall be upon such sum. If the judgment or decree before the possession of real or personal property, the damages shall be assessed on the value of the property. If the judgment or decree be for the dissolution of an injunction or other restraining process at law or in chancery, the damages shall be computed on the amount due the appellee which was enjoined or restrained. If the judgment or decree be for the dissolution of an injunction or other restraining process as to certain property, real or personal, or a certain interest in property, or be a judgment or decree for the sale of property, or some interest in it, to satisfy a sum out of the proceeds of sale, or to enforce or establish a lien or charge or claim upon or some interest in property, and the only matter complained of on the appeal is the decree as to some particular property or claim on it, the damages shall be computed on the value of the property or the interest in it, if the value of the property or interest in it be less than the judgment or decree against it; but if the value of the property or interest in it be greater than the amount of the judgment or decree against it, the damages shall be upon the amount of the judgment or decree; provided, however, the above penalty shall not be assessed against any condemnee appealing from a special court of eminent domain in any circumstances.

3. *Kentucky Revised Statute* §26A.300 (1980):

26A.300. Collection of judgment — Damages.

(1) When collection of a judgment for the payment of money has been stayed as provided in the Rules of Civil Procedure, there shall be no damages assessed on the first appeal as a matter of right contemplated by section 115 of the Constitution of Kentucky.

(2) When collection of a judgment for the payment of money has been stayed as provided in the Rules of Civil Procedure pending any other appeal, damages of ten percent (10%) on the amount stayed there shall be imposed against the appellant in the event the judgment is affirmed or the appeal is dismissed after having been docketed in an appellate court.

(3) Similar damages of ten percent (10%) shall be imposed when a petition for writ of certiorari, petition for rehearing, or other petition which stays collection of a judgment for the payment of money is denied by an appellate court under circumstances not constituting a first appeal under circumstances not constituting a first appeal under subsection (1) of this section.

(4) No additional penalty shall be imposed upon a party as a consequence of a review subsequent to a petition or a second appeal.

(5) Damages imposed under subsection (2) or (3) of this section shall not be payable and shall be void if the decision of the trial court awarding the payment of money is ultimately reversed. (Enact. Acts 1976, ch. 59, §1.)

4. *Virginia Code Annotated* §16.1-113 (Supp. 1984):

§16.1-113. How appeals tried; power of court when appeal not tried within two years.

Every such appeal shall be tried by the court in a summary way, or, if the amount in controversy exceeds fifty dollars, by a jury if either party requires it. All legal evidence produced by either party shall be heard, whether the same was produced or not before the court from which the appeal is taken. If judgment be recovered by the appellee, execution shall issue against the principal and his surety, jointly or separately, for the amount of the judgment, including interests and costs, with damages on the aggregate at the rate of ten percent annually, from the date of that judgment until payment, and for the costs of the appeal; and the execution shall be endorsed "No security is to be taken." If the decision be reversed, the party substantially prevailing shall recover his costs; and such order or judgment shall be made or given as ought to have been made or given by the judge of the court from which the appeal was taken. When the appeal is from an order or judgment under §§16.1-119 to 16.1-121, the court shall enter such judgment respecting the property, the expense of keeping it, and any injury done to it, as may be equitable among the parties.

No such appeal shall be striken from the docket or discontinued pursuant to §8.01-335. However, if such appeal is not tried within two years from the date the case has been docketed, then the court may, in the absence of good

cause show for such delay, and after notice to the appellant and his surety, if any, affirm the judgment or order rendered in the district court and award execution thereon against the appellant and his surety. (1956, c.555; 1980, c.129; 1984, c.38)

TABLE OF ABBREVIATIONS

"Petitioners" and/or "Magnolia"	Either of these terms is intended to refer to the petitioners in the present proceedings which were the appellants in the Eleventh Circuit Court of Appeals and the defendants in the District Court. In point of fact, there were four original defendants all of whom joined in the appeal to the Eleventh Circuit and all of whom join in the present petition; viz., Magnolia Brokerage Company, Jerrold Dean Thornton, Ligon Specialized Haulers, Inc., and Magnolia Freight Agency, Inc.
"Respondents" and/or "Jackson"	Anthony L. Jackson and his wife, Ollie Jackson, were the plaintiffs in the original action. They were the appellees in the Eleventh Circuit appeal and are the respondents in the present petition.
"Rule 8" and "Rule 38"	Either of these phrases is intended to refer to the applicable Federal Rule of Appellate Procedure.
"Subject Statute"	This phrase is intended to refer to Code of Alabama §12-22-75 (1975).

PRELIMINARY OBSERVATIONS

Jackson first notes that the Magnolia has expressly *not* raised the question of whether Alabama's affirmance fee statute is unconstitutional. Petitioners brief, p. i. Indeed, the Alabama Supreme Court has previously upheld the constitutionality of the subject statute. *Central of Ga. Ry. Co. v. Steed,* 287 Ala. 64, 76, 248 So.2d 110 (1971).

This Court has consistently recognized that as long as a state provides a full and fair trial on the merits, there is no requirement under the due process clause of the fourteenth amendment that appellate review be provided as well. See *Lindsey v. Normet,* 405 U.S. 56, 77 (1972). The Alabama Constitution contains no specific provision for appellate review. See *Johnson v. Barnes,* 250 Ala. 292, 34 So.2d 144 (1948); *Ex parte Tsimpides,* 272 Ala. 430, 434-37, 131 So.2d 873 (1961), cert. denied 369 U.S. 804 (1962). The right of appeal in Alabama is entirely statutory and is therefore subject to the conditions (such as the subject statute) enacted by the Alabama legislature.

The subject statute is applicable to money judgments affirmed on appeal. It is the first in a sequence of three statutes, each of which provides for a ten percent affirmance fee.[1] Each of these statutes are an integral part of an overall state scheme by which the state of Alabama administers its judicial system. For a period of over a hundred and sixty years[2] by a number of statutes enacted by the Alabama legislature and by a number of rules adopted by the Alabama Supreme Court, the State of Alabama has established a cohesive pattern of law governing every aspect of the Alabama's judicial system from filing costs to affirmance fees. The ruling which petitioner seeks would compel an intrusion by the federal courts into the state of Alabama's overall scheme for the administration of its judicial system and would result in a disruption of the integrated network of statutes and rules which make up the Alabama judicial system.

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[1]See also Alabama Code §12-22-73 (1975) (right of property); Alabama Code §12-22-74 (1975) (recovery of chattels).

[2]The subject statute was first enacted by the Alabama Legislature in 1820. Clay's Digest, 309, §20. See *Ex parte Weissinger & Crook,* 7 Ala. 710, 712 (1845); *Lawrence v. Jones,* 37 Ala. 388, 389 (1861). It has since been readopted in essentially the same form in ten subsequent recompilations or recodifications of the Alabama Code. The legislative history of the subject statute appear in parenthesis at the end of the statute. See Petitioners brief p. 2.

The Alabama judicial system is a function of many interconnecting statutes and rules most (if not all) of which have counterparts in the Federal Rules of Civil Procedure and/or the Federal Rules of Appellate Procedure. The approach suggested by the petitioner would require this Court to ignore the legal, equitable, and practical considerations which influenced the Alabama legislature and the Alabama Supreme Court to enact and/or to adopt the various statutes and rules which together make up Alabama's judicial system. This would constitute the realization of the fear that Justice Harlan expressed in his concurring opinion in *Hanna*:

> ". . . it is hard to think of a case where a conflicting state rule would be allowed to operate even though the state rule reflected policy considerations which, under *Erie* would lie within the realm of state legislative policy."
>
> *Hanna v. Plumer*, 380 U.S. 460 at 480.

ARGUMENT

REASONS FOR DENYING THE WRIT

1. The Order of the Court of Appeals Is Correct In Light of the Prior Decisions of This Court.

Magnolia contends that the Alabama affirmance fee statute, *Ala. Code* §12-22-72 (1975), conflicts with *Fed. R. App. P.* Rule 38 and *Fed. R. App. P.* Rule 8. Magnolia's petition is essentially based on this Court's holding in *Hanna v. Plumer*, 380 U.S. 460 (1965) [hereinafter *Hanna*].

In *Hanna* and subsequently in *Walker v. Armco Steel Corp.*, 446 U.S. 740 (1980) [hereinafter *Walker*] this Court clarified the analysis which a federal court should employ when, in an action based upon the court's exercise of diversity jurisdiction, a state law is alleged to conflict with a federal rule of procedure. If the federal rule "directly conflicts" with the state law, the court must then determine whether the federal rule is within the scope of the Enabling Act, 28 *U.S.C.* §2072 (1977), and is supported by a constitutional grant of federal power. *Hanna* at 471-474; *Walker* at 749.

Magnolia asserts that a *Hanna* analysis would reveal that in view of Rules 8 and/or 38, *Fed. R. App. P.*, it would be improper for a federal court in a diversity case to give application to Alabama's affirmance fee statute.

Jackson believes that petitioner's view of *Hanna* is defective. Petitioner contends that whenever it appears that the issue in question is merely "addressed by the federal rule", a *Hanna* analysis is essential. Petitioner brief, p. 6. According to petitioner, *Hanna* requires "almost mechanical" disregard for state law on all matters which are covered by a federal rule. Petitioner's brief, p. 10.

Respondents submit that a *Hanna* analysis that compels a federal court to disregard state law is dependent upon a preliminary finding of the existence of a "direct collision" or an "unavoidable collision" between the federal rule and the state law. *Hanna* at 470, 472; *Walker* at 749. In determining the existence of a direct collision, the court should give considera-

tion to the effect that application of the state law would have on the federal rule. In *Hanna* this Court dealt with a state law which if given effect would have totally defeated the purpose and the operation of the applicable federal rule. This Court alternatively noted:

> The Erie rule has never been invoked to *void* a Federal Rule. It is true that there have been cases where this Court had held applicable a state rule in the face of an argument that the situation was governed by one of the Federal Rules. But the holding of each such case was not that Erie commanded *displacement* of a Federal Rule by an inconsistent state rule, but rather that the scope of the Federal Rule was not as broad as the losing party urged, and therefore, there being no Federal Rule which covered the point in dispute, Erie commanded the enforcement of state law."
>
> *Hanna* at 470. (Emphasis supplied).

> To hold that a Federal Rule of Civil Procedure must *cease to function* whenever it alters the mode of enforcing state-created rights would be to disembowel either the Constitution's grant of power over federal procedure or Congress's attempt to exercise that power in the Enabling Act.
>
> *Hanna,* Id. at 473-474. (Emphasis supplied).
> See also *Walker* at 747-48.

Respondents submit that there is no direct or unavoidable collision between the subject statute and federal Rules 8 and/or 38 which voids or displaces these federal rules or causes them to cease to function.[3]

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[3]It should be noted that the contrary is not true. Magnolia's position if adopted, would completely vitiate the Alabama statute in diversity cases. In consequence, defendants (citizens and non-citizens alike) in diversity actions in federal courts in Alabama would be accorded significantly different and better treatment than defendants in the state courts of Alabama. This effect is offensive to the *Erie* rationale (see *Hanna,* headnote 11 at 467) and would provide defendants with an illegitimate motive to remove cases to the federal court.

The Alabama statute is directed to a specific class of cases not expressly governed by Rule 38 and does not even purport to address the matters governed by Rule 8.

The Alabama statute applies only if three conditions are present: (1) a money judgment is entered; (2) the judgment is stayed on appeal; and (3) the appellate court affirms the judgment. *Snellings v. Builder's Supply,* 229 Ala. 1, 155 So. 858 (1934). Rule 38, in contrast, permits the appellate court to award damages and costs to any appellee if it determines that his appeal is frivolous.

It is significant to note that the Supreme Court of Alabama has adopted a state counterpart to federal Rule 38. *Ala. R. App. P.* Rule 38.[4] The two rules are virtually identical. Magnolia's contention that there is a direct conflict between the subject statute and Rule 38 which has the effect of voiding or displacing the rule or ceasing its function is utterly inconsistent with the fact that the Alabama Supreme Court has applied *both* the affirmance fee statute and the frivolous appeal rule. *McAnnally v. Levco, Inc.,* 456 So.2d 66, 67 (Ala. 1984). See also *Hutson v. Hutson,* 351 So.2d 588, 591 (Ala. Civ. App. 1977).

The Alabama affirmance fee statute is not designed to supplant the authority of an appellate court (state or federal) to impose monetary sanctions on appellants who prosecute frivolous appeals. Thus, both state and federal Rule 38 — and — the Alabama statute are parallel, not conflicting. Both the state and the federal rule apply only to frivolous appeals whereas the subject statute applies only to money judgments stayed on appeal and later affirmed. Put another way, each rule covers ground which the statute does not.

Nor does the Alabama statute conflict with Rule 8, *Fed. R. App. P.* That rule merely provides that a federal court of appeals may stay a judgment pending appeal and may condition such relief upon the filing of a bond or other security.

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[4]In so doing, the Alabama Supreme Court did not repeal *Ala. Code* §12-22-72 (1975). See Appendix II, part A, to the *Ala. R. App. P.* which lists the statutes which are superseded or modified by the rules.

Rule 8 does not purport either to provide for or to prohibit the assessment of costs or damages against an unsuccessful appellant.

Magnolia cites the Fifth Circuit case of *Affholder v. Southern Rock, Inc.,* 746 F.2d 305 (5th Cir. 1984) as its principal authority in support of its position that a *Hanna* analysis should have required the lower court to disregard the Alabama statute.

There are critical distinctions between the Mississippi law at issue in *Affholder* and the Alabama law at issue in this case.

First, the Mississippi statute is much broader. It applies automatically to the affirmance of any judgment or decree or any failure to prosecute an appeal. *Miss. Code Ann.* §11-3-23 (Supp. 1984). The Mississippi statute, unlike the Alabama statute, has no conditions precedent to its application and covers every situation in which Rule 38 could conceivably apply. Thus, there is more of a "direct collision" between the Mississippi statute and the federal rule.

Secondly, unlike Alabama, Mississippi has *not* adopted any state counterpart to Rule 38. The sole and only provision of Mississippi law applicable to the appellate process was at issue in *Affholder.* Again, there is more of a "direct collision" between the Mississippi statute and the federal rule. The distinction is important. It evidences an entirely different state scheme for managing appeals.

Thirdly, Magnolia asserts that the sole and exclusive purpose of the subject statute is to "deter frivolous appeals", and, is therefore utterly embraced by and inconsistent with Rule 38. Petitioner's brief, p. 6. Petitioner mentions no other purpose served by the subject statute. Petitioner cites *Montgomery Light & Water Power Co. v. Thombs,* 204 Ala. 678, 87 So. 205 (1920) in support of this assertion. As to the *Thombs* case, the Alabama Supreme Court subsequently noted:

> While this court *incidentally observed* in Montgomery Light & Water Power Co. v. Thombs (citing) that §6153, Code, (the predecessor to §12-22-72) was intended to pen-

> alize frivolous or delay appeals, *it was not intended to assert that such was the only purpose*, . . ."
>
> *Snellings v. Builders' Supply Co.*, 229 Ala. 1, 156 So. 858 (1934). (Emphasis supplied).

In point of fact, the Alabama Supreme Court in an even later case held that "in our view, *the real purpose* of §814 (a later predecessor of §12-22-72) was to provide appellee litigants with the additional damages from superseded judgments when an affirmance has been ordered. *City of Birmingham v. Bowen*, 254 Ala. 41, 47, 47 So.2d 174 (1950). (Emphasis supplied).

The Eleventh Circuit has recognized this as the paramount purpose of the Alabama statute.

> The Alabama Supreme Court applied the 10 percent penalty, noting that the statute's purpose was to provide appellee litigants with additional damages from superseded judgments when an affirmance fee has been ordered.
>
> *Locke v. Allstate Insurance Co.*, 696 F.2d 1340, 1342 (11th Cir. 1983).

Thus, neither in purpose nor in operation does the Alabama statute directly collide with federal Rule 38.

As Justice Harlan observed in his concurring opinion in *Hanna*, the *Erie* decision reflected more than just the court's concerns about forum-shopping and equitable administration of the laws. 380 U.S. at 474. That decision remains "one of the modern cornerstones of our federalism, expressing policies that profoundly touch the allocation of power between the state and federal systems." *Id.* Alabama has not seen fit to permit the recovery of prejudgment interest on money judgments in tort cases. Prejudgment interest is recoverable in 25 states and in federal courts in actions arising under federal law. See Appendix I. The Alabama affirmance fee statute has an ex ante prejudgment interest effect which compensates the injured plaintiff for the additional expenses and attorney fees associated with an appeal and for the loss of the use of the

money judgment retained by the defendant during the pendency of his appeal. As the Fifth Circuit correctly concluded in *Proctor v. Gissendaner,* 587 F.2d 182, 184 (5th Cir. 1979), for purposes of *Erie* the Alabama statute is substantive, not merely procedural. As *Hanna* and *Walker* indicate, the *Erie* analysis is supplanted only if the state statute directly conflicts with a federal rule of procedure. If not, the state's policies, as embodied in its own statutes, must be honored by the federal court. Such is the case here.

2. The Order of the Court of Appeals Does Not Justify An Exercise of This Court's Supervisory Authority Over Courts of Appeal.

Magnolia argues that the Fifth Circuit's holding in *Affholder* compels the conclusion that wherever a federal rule is addressed to the same issue as a state rule, the application of the principles of *Hanna* is so straightforward that it is "almost mechanical." Petitioner's brief p. 10. For this reason, Magnolia contends that the Eleventh Circuit's failure to follow a *Hanna v. Plumer* analysis and thereby vitiate the Alabama statute warrants this Court's exercise of its supervisory authority over Courts of Appeal.

Petitioner's zeal concerning this assertion is reflected by the following:

> Litigants in the federal system are entitled to a higher level of jurisprudence than that reflected in the Eleventh Circuit's treatment to date of the affirmance penalty issue.
>
> Petitioners brief, p. 11.

Respondents submit that this criticism is excessive and unjustified. In two separate briefs, Magnolia brought the Fifth Circuit's opinion in *Affholder* to the Eleventh Circuit's attention. The Eleventh Circuit's order granting Jackson's motion for application of the affirmance fee specifically cites the *Affholder* case. Petitioner's brief, p. A-8. The critical distinctions between the Mississippi statute at issue in *Affholder* and the Alabama statute at issue in the present case have been previ-

ously set forth. The Eleventh Circuit was correct in declining to reject the Alabama statute by applying a *Hanna* analysis as the Fifth Circuit did in *Affholder* with respect to the Mississippi statute.

3. The Question Presented Is Of Importance Only To Alabama Litigants.

Magnolia argues that the question presented "has potential impact in every other jurisdiction in which a state standard for punishing frivolous appeals differs from the standard of Rule 38." Petitioners Brief, p. 10. Jackson submits that the decision which the petitioners seek in this case will have no effect outside of the state of Alabama.

The petitioners do not call the Court's attention to a single jurisdiction in which the state standard with respect to frivolous appeals differs from the federal Rule 38 standard. In point of fact, the petitioners do not call the Court's attention to any other jurisdiction which has not adopted a state statute or rule equivalent to federal Rule 38, Fed. R. App. P.

Respondents are aware of only two mandatory statutes similar to the Alabama statute at issue. Miss. Code Ann. §11-3-23 (Supp. 1984); Ky. Rev. Stat. §26A.300 (1980).[5] The Fifth Circuit has already determined that the Mississippi statute does not apply in federal actions based on diversity jurisdiction. Nor would the Kentucky statute apply upon affirmance of a federal district court judgment by a circuit court of appeals. The Kentucky provision exempts a first appeal as of right from damages upon affirmance. Ky. Rev. Stat. §26A.300(1); *Ash v. Security National Insurance Co.*, 574 S.W.2d 346, 347 (Ky. Ct. App. 1978).

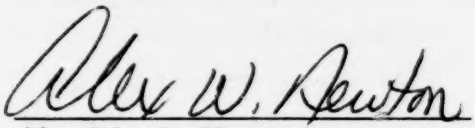
Thus, any decision in this case would effect Alabama litigants only.

[5]A somewhat similar Virginia statute applies only to appeals from trial courts not of record to those of general jurisdiction. Va. Code Ann. §16.1-113 (Supp. 1984). That provision clearly would not have any effect in federal proceedings.

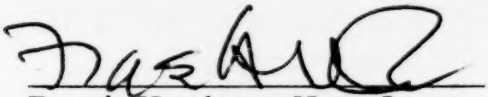
CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari in this case should be denied.

Respectfully submitted,



Alex Worthy Newton



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APPENDIX

APPENDIX I

A. STATES WHICH PERMIT RECOVERY OF PRE-JUDGMENT INTEREST IN TORT CASES

1. Alaska Stat. §§09.50.270; 45.45.010 (enacted 1968).
2. Cal. Civil Code §3291 (enacted 1982).
3. Colo. Rev. Stat. §13-21-101 (enacted 1935).
4. Conn. Gen. Stat. §37-3a (enacted 1981).
5. Hawaii Rev. Stat. §636-16 (enacted 1979).
6. Iowa Code §535.3 (enacted 1980).
7. La. Rev. Stat. Ann. §13-4203 (enacted 1916).
8. Me. Rev. Stat. Ann. tit. 14 §1602 (enacted 1969).
9. Md. Cts. & Jud. Proc. Code Ann. §11-301 (enacted 1980).
10. Mass. Ann. Laws Ch. 231 §6B, supp. §11 (enacted 1946).
11. Mich. Comp. Laws §600.6013 (enacted 1965).
12. Nev. Rev. State. §1 (b) 1974 (enacted 1979).
13. N.H. Rev. Stat. Ann. §524:1-b (enacted 1957).
14. N.J. Rev. Stat. §4:42-11 (b).
15. N.Y. Estates Power & Trust Law §5-4.3 (enacted 1967).
16. N.C. Gen. Stat. §24-5 (enacted 1981).
17. Ohio Rev. Code Ann. §1343.03 (enacted 1982).
18. Okla. Stat. tit. 12, §727 (2) (enacted 1971).
19. Pa. Con. Stat. §2.31 Rule 2.38 (1979).
20. R.I. Gen. Laws §9.21-10 (enacted 1958).
21. Tenn. Code Ann. §47-14-123 (enacted 1979).
22. Utah Code Ann. §15-1-4; 7-8-27-44 (enacted 1975).
23. Va. Code 8.01-382 (enacted 1979).
24. W. Va. Code §56-3-31 (enacted 1981).
25. Wis. Stat. §807.01 (enacted 1980).

B. PARTIAL LIST OF FEDERAL CASES WHICH RECOGNIZE THE RECOVERABILITY OF PREJUDGMENT INTEREST IN CASES ARISING UNDER FEDERAL LAW.

1. *Rodgers v. United States,* 332 U.S. 371 (1947). (Recognition of general proposition that federal courts may exercise equitable powers to grant prejudgment interest in certain cases arising under federal law.)
2. *Bricklayers' Pension Trust Fund v. Taiariol,* 671 F.2d 988, 989 (6th Cir. 1982) (Labor-Management Relations Act of 1947 and the Employment Retirement Income Security Act of 1974.)
3. *Olsen v. Shell Oil Co.,* 708 F.2d 976 (5th Cir. 1983) (Outer Continental Shelf Lands Act)
4. *Moore-McCormack Lines, Inc. v. Richardson,* 295 F.2d 583, 592-595 (2nd Cir. 1961), cert. denied 368 U.S. 989 (1962) (Death On The High Seas Act)
5. *Noritake Co. v. M/V Hellenic Champion,* 627 F.2d 724, 728 (5th Cir. 1980) (Death On The High Seas Act)
6. *General Motors Corp. v. Devex Corp.,* 461 U.S. 648 (1983) (patent infringement)
7. *National Airlines, Inc. v. Stiles,* 268 F.2d 400 (5th Cir. 1959)
8. *Mayer v. Branniff Airways, Inc.,* 310 F.Supp. 194 (N.D. Ill. 1970)
9. *In re Air Crash Disaster Near Chicago,* M.D.L. 391 (N.D. Ill. 1979)